

RevEx Subcommittee on Issues #4 and #5 – ACCP
November 12, 2015

Present: Jim Brunker, Marv Prestrud, Dave Tierney, Bob Zimpel, Dave Tierny, April Vingum, Tom Bressner, Tom Lochner, Ferron Havens, Scott Firlus, Karen Gefvert, Bob Welch, Amy Winters, John Manske, Kristen Faucon, Tim Clay, Dave Flakne, Mark Dawson, Amy Haak, Frank Masters, Paul Ferguson, Stan Senger, Mae Friederich, Trevor Bannister, Steve Martin, Jennifer Heaton-Amrhein, Lori Bowman, John Petty (afternoon), Karley Downing (afternoon)

Lori Bowman welcomed the subcommittee and provided a brief overview of the RevEx project. She also went over the goals of the meeting: 1) Having a common understanding of the ACCP Reimbursement Program, 2) The ACCP fund (how fees are collected, payments and “lapses”, and the fund balance) and receiving recommendations on the future of the ACCP Reimbursement Program, and 3) Receiving recommendations on the existing ACCP Fund balance, if there was time.

Stan Senger gave a presentation on the history of the ACCP, including the statutory authority for the program and other statutes with which the department must comply, related administrative codes and how sites enter and exit the program. Senger mentioned that most of the heavily contaminated historic sites had been part of the program and were cleaned up, but cases also typically get “closed” with known residual contamination. Today, there are 412 active agchem facilities, 150 active ACCP cases, and 170 ACCP cases that are conditionally closed with continuing obligations. In addition, there are between 30-50 acute spills each year. There are also 23 active sites that have reached their maximum reimbursement and 35 sites overall that have reached their maximum. The program no longer does remedial investigation initiations (RII) unless contamination is evident, and most sites now enter the ACCP as a result of large spills, continuing obligations at closure (residual contamination), and rule-required or lender-related assessments (real estate transactions).

Committee members asked what options are available for those who have maxed out their reimbursement eligibility. Senger said that there is no reimbursement available through ACCP when sites max out (or are otherwise ineligible) and many of those clean-ups stall. Bowman said the department could conditionalize licenses or write administrative orders if the clean-ups progressed at an unacceptable rate, but that has not happened to date. Ferron Havens posed the question of whether the discharge site cap was high enough.

Mae Friederich provided a presentation on ACCP reimbursement. Since the inception of the program, ACCP has reimbursed facilities and farmers over \$43 million on \$58 million in eligible costs. The average cost of a clean-up has been \$141,000. Almost 95% of costs submitted for reimbursement have been determined to be eligible for reimbursement. Farmers have accounted for about 12% of ACCP sites, and about 4% of the reimbursements. Over 60% of reimbursed expenses were direct soil or groundwater remediation costs.

Jennifer Heaton-Amrhein gave a presentation on the ACCP fund. By law, the department is required to keep a fund balance (after annual revenues and reimbursements) below \$2.5 million and must reduce fees to keep the balance below this level. The department has not met this statutory requirement very often over the past 15 years and is currently not in compliance. The ACCP fund receives revenues from a variety of pesticide and fertilizer licenses. Pesticide product registrations and fertilize tonnage account for over 95% of the annual revenue, with pesticide product registrations on products over \$75,000 in

sales annually exceeding 68% of the total revenue. Fees have been reduced multiple times since 1997 and the fund balance still exceeds the maximum allowed due to increasing and volatile fertilizer and pesticide sales. Of the total \$56 million in ACCP Fund expenditures from 1993 through 2017 (estimated), there were approximately \$45 million in reimbursements and \$11 million in lapses/transfers and “other program” expenses. The current ACCP fund balance is \$5.3 million. Bob Zimpel, representing TH Agrichemicals, stated that he expects the pesticide and fertilizer revenues to go down this year. Heaton-Amrhein said that the preliminary pesticide registrations numbers indicate that revenues may decrease this year.

Bob Welch, representing the Corn Growers, asked Paul Ferguson of the Legislative Fiscal Bureau (LFB) why the LFB numbers are different than the department’s numbers. Ferguson stated that the LFB provides conservative estimates to ensure adequate funding. Heaton-Amrhein stated that she was using the LFB numbers.

Jim Bruncker of M3 Insurance provided a comparison of available insurance options and the ACCP (See handout). He said that if the ACCP fund goes away, there is no change to insurance since insurance already pays first. He added that the programs are actually complementary:

- Insurance pays for the few, unknown sudden and catastrophic events, while the ACCP pays for contamination through drips and dribbles and “known” losses (e.g. continuing obligations).
- Insurance pays for loss of product while ACCP pays to do the actual clean-up.
- While the ACCP covers all impacted areas, insurance is limited to the lot lines.
- Insurance companies need to make a profit so the cost would increase 3-4-5 times more than what is currently collected by the ACCP.
- Insurance companies need to be selective in their risk, the ACCP does not.
- There is no retroactive coverage for insurance, which the ACCP does cover – insurance will not cover continuing obligations at sites.
- The ACCP’s RP is broad, while a claimant for insurance is singular.

The minimum annual premium for an environmental protection rider would be \$5,000 to \$10,000 for up to \$1 million in coverage. A larger facility would pay \$100,000 for up to \$1 million in coverage. A family farm would be around \$800 annually. If the state mandated insurance, this would be considered a “captured alternative risk” and policies would be sold with a very high deductible to make the premium more affordable.

Scott Firlus, representing Allied Cooperative, asked what the probability would be, if a claim was submitted, that the insurance company would drop future coverage for the facility or the farmer. Jim said that it was a good probability that the insured would be dropped – there is no requirement that an insurer has to insure someone.

The subcommittee asked what facilities in other states do, since only MN and KS have a program comparable to the ACCP. Bowman responded that many other states do not have WI’s groundwater issues or environmental laws, and so facilities may not be completing clean-ups. Other committee members responded that the facilities do not clean-up the contamination, but they should be.

The subcommittee discussed Question 1: *Do you desire a reimbursement program if we can manage the ACCP fund balance close to zero?*

Mark Dawson, of Sand Creek Consultants, stated that he is aware of the many pros of the ACCP, and asked what the “cons” to the existing program are.

Welch stated that the Corn Growers are the leading advocate for ending the ACCP. The Corn Growers feel that farmers don’t benefit from the fund, the money is stolen, and the source of the revenue is not related to who benefits from the expenditures.

Tom Lochner, representing the Wisconsin Cranberry Growers Association, said that 95% of the funds comes out of farmers’ pockets, but the cleanup funds aren’t used by farmers.

Dave Flakne, representing Syngenta, pointed out that not all facilities are independently owned. Growers are benefiting when they are part of a cooperative.

Zimpel said he is in favor of keeping the fund. He’d like to lower the deductible/co-payment and increase the lifetime maximum. He doesn’t want growers to pay the fees directly – make the dealers, and make sure pesticide manufacturers pay a portion.

Tom Bressner, of the Wisconsin Agri-business Association, stated that the fund is more efficient than insurance. He agrees with getting the funding off the consumer bills. He said it is still the best deal for everyone if the fund stays in place.

Ferron Havens, dairy producer and former ACCP Council member, mentioned that the cooperatives are assuming the risk and that the farmers are benefitting because the cooperatives handle the product they need. He stated that farmers will pay for the program whether it is through fees or included in the cost of the product. He wants everyone (farmers and facilities) eligible for the fund.

Dave Flakne said that as a pesticide manufacturer, Syngenta supports keeping the fund as a “no-fault” insurance program. He stated that the pesticide manufacturers help pay for the program by contributing fees to pay for staff. He stated that both the growers and the manufacturers hate the pesticide surcharge, and that even doing some “baby math” it is likely that there is an easy way to change the fee structure and bring in enough revenue to fund the program at a reduced level.

Lochner stated that we need a fund. It is the way we pay for it that bothers him. There needs to be a mechanism to pay for spills.

John Manske, an ex officio member representing Cooperative Network, stated that his members want the program, but they don’t know how far into the future. They are not entrenched in the status quo. Cooperative Network has supported changes to the ACCP in the past. They do not want the money to be inappropriately used.

Havens stated that the program should be inclusive.

Welch stated that farmers don't have exposure and don't want to have coverage from the ACCP. He said that the fund should continue to exist only if it is not for farmers and only if the funding can be fixed.

Bowman summarized this discussion. In general, the subcommittee appears to support an ACCP reimbursement program (with the exception of the Corn Growers), with a need to fund it differently and at a more appropriate level to prevent future transfers and lapses.

Discussion Question #2: Any desire to make changes to the existing reimbursement program??

Welch stated that if there is an ACCP reimbursement program going forward, corn growers and farmers should be excluded from it.

Frank Masters, representing Twin State, Inc. and the ACCP Council, stated that long-term facilities have contamination and clean-ups due to longevity, not bad management. He would support raising the lifetime maximum.

Firlus said he would support raising the lifetime maximum.

Amy Winters, representing CropLife, stated that a cap increase would allow for inflation.

Mark Dawson asked what the purpose of the cap was? Responses from the group were that it was a cost control not unlike what an insurance policy might have, and others felt that it was an effort to not let bad actors have access to the fund.

Tim Clay, representing Cooperative Network and the ACCP Council, said that it is clear we need more predictable funding sources, and a mechanism to turn on/off the funding and make changes much more quickly than we currently are able to if we want to keep revenues aligned with expenditures.

Karen Gefvert, representing the Wisconsin Farm Bureau Federation, said she sees the \$100,000 being discussed as a cap increase as part of a cost of doing business. She suggested the program have a review council to which those requesting additional funds beyond the lifetime maximum could appeal. Rather than raising the limit for everyone, those requesting additional funds would need to justify the reason to the Council.

Amy Haak, representing Country Vision Cooperative, stated that there has been lots of consolidation in the industry, and there will continue to be consolidation. She stated that the 35 sites that are over the lifetime maximum will likely increase in number due to consolidation.

Flakne stated that the broader the base of fees, the less pain for any one segment of the industry. He said that he would want farmers to be eligible.

Gefvert stated that the Farm Bureau's official policy is that they want the ACCP Fund to be eliminated, but if the fund exists, they would have to discuss whether or not the Farm Bureau would want farmers to be able to participate in it.

Lochner stated that he thinks the biggest issue is the funding. He would like the department to run some numbers on some alternatives to how the current fees are collected. Also, he would like the fees to be lower. He stated that he knows consumers will pay regardless, but does not want it on the bill. He said that he doesn't know of a grower who has ever applied for a claim. He noted that everything up there (possible changes to the ACCP on the screen) increase the program and the fund. He stated that they want to get out of paying for the ACCP.

Zimpel stated that he has had a number of customers who have had spills and he would like to ensure that they are eligible for the program.

Welch said that based on the numbers provided there have been only an average of 2.5 growers per year who have used the fund.

Havens stated that he would like to see the discharge site cap increase only for currently active facilities to help active facilities and participants, not those sites that have moved on to a non-agricultural purpose.

Dawson stated that the only reason the state has been successful cleaning up agrichemical contamination is because of aggressive inspection and reimbursement. This has had incredible effects on the environment, and to be too restrictive would be very negative. He stated that he works in many other states without reimbursement programs and the level of historic and current agrichemical contamination is much higher. States that have no program have incredible costs to the facilities' neighbors and there is a push to try to restrict the companies too much.

Amy Winters, representing CropLife, stated that the ACCP originally had some GPR as funding because there was a sense of the public good the clean-ups provided.

Welch complemented the department on running a more effective program than PECFA. He questioned why active or new facilities would have contamination since they are complying with new standards meant to protect the environment. Several committee members explained that the de minimus releases over a long period of time add up to contamination. There is nothing that can be done to control those daily small releases that accumulate as part of the normal course of doing business.

Clay asked the department to calculate some numbers that would deliberately underfund the program and pay interest. For example, he suggested the department calculate an option that would bring in \$800,000 in annual revenue and would assume holding claims and paying the prime interest rate.

Masters stated that, based on his many years with the ACCP Council, the fund is accounted for very well, almost punitively given the fund balance, and he can't think of anything the department could do administratively to save money.

Winters asked if there is a need for a dialog for what is clean. Bowman stated that what is considered clean is in NR 700, and that in most cases there is no set number that applies across the board. It depends on the site and circumstances.

Winters requested the department provide the committee a copy of the MOU with DNR.

Bowman concluded the discussion by noting that the department may have legal limitations on what it can do. She stated that staff will bring back numbers on 1/6/16 and that it may survey others outside the group after the next meeting.

Discussion Question #3: *How should we address the immediate ACCP fund balance?*

Welch stated that a fee holiday is imperative. All subcommittee members agreed. Bowman replied that the Governor has to approve a scope statement, even for an emergency rule. DATCP will be trying for an emergency rule in April, to have it be in effect for the 2016-2017 fertilizer license year (fertilizer sales beginning July 1, 2016), and the 2017 pesticide licensing year (pesticide sales beginning October 1, 2016). If the emergency rule is approved, this will give industry time to change their systems to remove the fees from the bill. The department will need industry support to get the emergency rule approved.

Flakne pointed out that by the time a fee holiday can be implemented, the legislature will already have taken it. He stated the need to defend the fund at joint finance.

Clay said that the pollution prevention program was developed to keep the fund in check but it was never implemented. He stated that we need a new system in place to ensure no balance so the department can't fail industry again since previous efforts have not been sufficient. Flakne suggested getting rid of the pollution prevention grant program. He stated that having that program on the books suggests that the department wants to do something with the ACCP Fund besides funding reimbursements.

Bowman concluded the meeting stating that the department will bring back some numbers and options at the next meeting, scheduled for January 6, 2016. She said if subcommittee members have other ideas they want us to consider, they should let her or Heaton-Amrhein know.

The meeting adjourned at 2:30 p.m.